

In the Matter of Merchant Mariner's Document No. Z-1026709 and all
other Seaman Documents
Issued to: MOHAMED ALI

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1046

MOHAMED ALI

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 3 December 1957, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended Appellant's seaman document upon finding him guilty of misconduct. Two specifications allege that while serving as an oiler on board the American SS JULIA LUCKENBACH under authority of the document above described, on or about 16 November 1957 Appellant failed to perform his duties, the vessel then being in a foreign port; and he addressed the Junior Third Assistant Engineer with abusive and profane language.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement. He then introduced in evidence an entry from the ship's Official Logbook and the testimony of the Junior Third Assistant Engineer. In defense, Appellant offered in evidence his own sworn testimony in which he denied the allegations.

At the conclusion of the hearing, both parties were given an opportunity to submit argument and proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright and three months on probation for eighteen months.

The decision was served on 3 December 1957. Appeal was timely

filed on 17 December 1957.

FINDINGS OF FACT

On 16 November 1957, Appellant was serving as an oiler on board the American SS JULIA LUCKENBACH, and acting under authority of his Merchant Mariner's Document No. Z-1026709 while the ship was in the port of Caldera, Chile. On this date, Appellant was standing the port watch from 1600 to 2400. As part of his assigned duties, Appellant left the engine room to check the reefer box temperatures at 2110. Since Appellant had not returned by 2145, the Junior Third Assistant Engineer, who was in charge of the engine room watch, left the engine room to look for Appellant and found him in the crew mess hall. When the engineering officer questioned Appellant as to why he was in the mess hall, the latter replied that he had to use the toilet, and he then commenced berating the officer with profane and abusive language. The Junior Third Assistant returned to the engine room followed by Appellant; but shortly thereafter, at 2200, Appellant left the engine room without permission from the Junior Third Assistant and did not return for the remaining two hours of the watch.

Appellant's prior record consists of sleeping on watch in 1946, for which he was admonished; failure to turn to in 1946, for which he was admonished; possession of and assault with a dangerous weapon upon a shipmate in 1947, for which he received six months' outright suspension and six months' suspension on twenty-four months' probation; desertion for which his document was revoked in 1950 since this offense violated the prior probation. Appellant was issued a new document in October 1952.

This appeal has been taken from the order imposed by the Examiner. The Appellant sets forth no ground for appeal.

APPEARANCE ON APPEAL: Bloom, Tarbox and Jue of San Francisco, California, by Joseph G. Jue, Esquire, of Counsel.

OPINION

This case has been reviewed on the basis of the record without any specific grounds for appeal having been submitted by Appellant. No brief in support of the appeal was submitted.

A minute re-examination of the record is not required under these circumstances. Review of the Examiner's decision is limited to specific exceptions and clear errors on the record. Attorney General's Manual on the Administrative Procedure Act (1947), p. 84, note 5; Commandant's Appeal Nos. 939, 940, 1005. In view of the

blanket nature of this appeal, it is sufficient to state that the Examiner's findings are supported by substantial evidence. Although the Examiner, by implication, rejected the denials of Appellant by accepting the testimony of the Third Assistant, as corroborated by the logbook entry, the Examiner should have made a specific finding with respect to the credibility of witnesses, observed by him, who gave conflicting testimony.

In view of Appellant's prior record, the offenses proved justify the suspension ordered.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 3 December 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 13th day of June, 1958.